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W.P.No.27740 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.27740 of 2024

1. Arukathal
2. Valarmathi
3. Bakiyam
4. Poongodi
5. Thangavel
6. Thangadurai

...Petitioners

Vs.

The Sub Registrar,
Mulanoor Sub Registrar Office,
Tiruppur District.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned refusal Check Slip dated 31.07.2024 in RFL/Moolanur / 19/2024 made by the respondent, quash the same and consequently direct the respondent to register and release the sale deed dated 31.07.2024.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.T.Chezhiyan
Additional Government Pleader



ORDER

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Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Moolanur/19/2024, dated 31.07.2024 issued by the respondent, refusing to register the Sale Deed dated 31.07.2024 on the ground that the petitioners 1 to 5 failed to produce the original title documents, the present writ petition is filed by the petitioners.

2. According to the petitioners 1 to 5, their father Karuupusamy purchased the land measuring 2 acres out of 3.79 3/4 Acres in old survey Nos.2129, 2130, 2131 corresponding to survey Nos.2129/2, 2130/2, 2131/2 in Kilangundal Village, Dharapuram Taluk, Tiruppur District from one Nachimuthu Gounder and Ramalingam. The petitioner's father died on 21.06.2016 and the property devolved on the petitioners 1 to 5. The petitioners 1 to 5 executed the sale deed in favour of the sixth petitioner and presented the same for registration. The respondent however passed the impugned refusal Check Slip on the ground that the petitioners 1 to 5 failed to produce original title documents. In the impugned refusal check slip the respondent also raised the objection stating that the petitioners 1 to 5 failed to mention the 4 boundaries of the subject property. It is also further stated that revenue documents are not standing in the name of the petitioners 1 to 5 or



their father Karuppursamy and therefore, the sale deed was refused.

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3. The learned counsel for the petitioners submits that the property was purchased by the father of the petitioners 1 to 5 in the year 1983 and the original title documents could not be found by the petitioners inspite of diligent efforts to trace the same and hence, they were unable to produce the original documents. It is also submitted that the patta for the said property stand in the name of the vendor Nachimuthugounder and the same cannot be a ground for refusing registration. The learned counsel for the petitioners further submitted that the petitioners 1 to 5 are only conveying un-divided share of the property in favour of the sixth petitioner, as mentioned in the sale deed and it is proper.

4. Mr. T. Chezhiyan, learned Additional Government Pleader, who takes notice for the respondent, by relying on Rule 55-A of Registration Rules framed under the Registration Act, 1908, submitted that unless original document is produced, the Registering Authority cannot entertain registration.

5. The issue involved in this case regarding non-production of original title document was already considered by the Division Bench of the Madurai



Bench of this Court in ***M.Ariyanatchi and another vs. Inspector General of***

Registration and another made in ***W.A.(MD).No.856 of 2023, dated***

27.06.2023 wherein the Division Bench observed as follows:-

“10. The object of Rule 55-A(i) of the Registration Rules is said to be to prevent fraudulent registrations. We are sure that Rule 55-A(i) is not a method by which fraudulent registrations could be prevented. Once the status of the executant is accepted and the ownership of the property by the predecessor-in-interest is also accepted, insistence upon production of original document, in our opinion, in cases of this nature, would only lead to empowering corruption. We must also point out that such refusal to register for non-production of original document would definitely infringe the rights guaranteed under Article 300A of the Constitution of India.

*11. While dealing with the first proviso to Rule 55-A of the Registration Rules, this Court had, in the **Federal Bank Ltd., vs. the Sub Registrar, Pollachi** [order dated 08.02.2023 in W.P.No.2758 of 2023], pointed out that if the Rule, which is a subordinate legislation, is in conflict with the substantive law, it will not prevail.*

12. Rule 55-A(i), in our opinion, in the given circumstances, would result in infringement of proprietary right guaranteed under Article 300A of the Constitution of India. There is nothing in the substantive law, which prevents the co-owner from dealing with his / her share in the property. If the co-owner, who deals with his / her share in the property, had created



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encumbrance, such transfer will be subject to such encumbrance.

If the other co-owner had created encumbrance, that encumbrance will be confined to the share of the other co-owner only. Therefore, enough and more safeguards are already available both under the Transfer of Property Act, 1882 as well as in the Registration Act, 1908.

*13. No doubt, requirement to produce the original document would be a safer method by which the Sub Registrar can ensure that the property belongs to the executant. But, that is not the only method. In the case on hand, it is clearly seen that the earlier document was also registered with the very same Sub Registrar and after computerization and digitization, the document is available online for the Sub Registrar to peruse. He can always take an undertaking or a declaration in the form of a sworn affidavit from the vendors to the effect that the original document is with their siblings and register the document.
... ”*

6. I had occasion to consider similar question in ***Venugopal vs. Inspector General of Registration*** (Order made in W.P. No. 22270 of 2024 dated 14.08.2024). The relevant observation in the said case reads as follows:-

“16. The Proviso 3 to Rule 55-A does not say Non-Traceable Certificate shall be issued by police within a time frame. We cannot expect the petitioner, who presented the



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*document for registration to wait endlessly expecting Non-Traceable Certificate. Further, Section 23 of Registration Act compels presentant to present the document for registration within four months. Hence, presentant cannot wait indefinitely for non-traceable certificate by Police. The Proviso 3 to Rule 55-A(i) does not mention any time limit for issue of non-traceable certificate. Hence, if Police Authorities failed to issue certificate within time to enable presentant to comply with Section 23 of Registration Act, there is a danger of document being refused as presented out of time. Therefore, following the order passed by the Division Bench of this Court in **M.Ariyanatchi** case, this Court directs the 2nd respondent to register the document on petitioner fulfilling certain conditions, which can be treated as substantial compliance of Proviso 3 to Rule 55-A.*

17. As mentioned earlier, failure to produce original title document is not a ground to refuse registration provided petitioner satisfy third proviso to Rule 55-A(i). Therefore, the impugned Refusal Check Slip issued by the 2nd respondent in RFL / CHENNIMALAI / 25 / 2024, dated 30.04.2024 is quashed and the petitioner is directed to represent the document before the 2nd respondent within a period of two weeks from today, along with an affidavit mentioning the fact of loss of original title document and untraceability of the same. The petitioner shall also enclose newspaper advertisement issued by him in leading Tamil newspapers having wide circulation in Erode District. The Newspaper advertisement shall disclose loss of original title deed



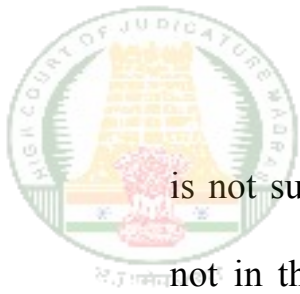
and intention of the Seller to convey the property. On fulfilment of these two conditions, the 2nd respondent is directed to register the same.

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18. Therefore, the Writ Petition stands allowed with the above directions. No costs."

7. In view of the law laid down in the above mentioned cases, failure of the petitioners 1 to 5 to produce original title document at the time of registration, cannot be a ground for refusal of registration. The reason for failure of the petitioners 1 to 5 to produce original document was due to misplacement of original document. Hence, the respondent is not justified in refusing registration of the Sale Deed presented for registration.

8. A perusal of the sale deed presented for registration, would indicate that the petitioners 1 to 5 are only conveying un-divided share of 2 acres in favour of the sixth petitioner. Even in parent document dated 03..09.1983, father of petitioners 1 to 5, Karuupusamy purchased only undivided 2 acres out of total 3.79 3/4 acres described therein. Therefore, it may not be possible for them to furnish the four boundaries for 2 Acres of un-divided share. Therefore, the said reason given by the respondent in the impugned check slip



is not sustainable in the eye of law. Merely because revenue documents are not in the names of the petitioners 1 to 5, the respondent is not entitled to reject the registration. In this regard, it would be appropriate to refer to the decision of this Court in **Subramani vs. Sub Registrar** in W.P.No.11056 of 2024, dated 26.04.2024, wherein this Court observed as follows:-

"31. Now, this Court has to point out settled position of law in various aspects. With regard to the refusal slips issued on the ground of

a. failure to produce chitta, adangal, FMB sketch, patta is concerned, this Court in the case of the Trust for Education and Rehabilitation of Disabled Orphans and Destitutes represented by its Managing Trustee v. The Inspector General of Registration, Chennai reported in 2002 (i) MLJ 244 has held that Sub-Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. Similarly, in the case of Jesupalam vs Registrar reported in 2015 SCC Online Mad 7660, it was held that the Sub-Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. therefore, when the Constitutional Courts interpreted the provisions of the Registration Act and laid a law, wherein, the Inspector General of Registration is also a party, issuing the circular contrary to the above judgment to produce patta, chitta, adangal cannot be sustained in the eye of law."

Therefore, the impugned refusal slip is not sustainable in the eye of



law and hence the same is quashed.

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9. In view of the same, this Court is inclined to direct the petitioners 1 to 5 to re-present the sale deed before the respondent within a period of two weeks from the date of receipt of a copy of this order along with an affidavit narrating the reason for their failure to produce original title documents and also newspaper advertisement. On receipt of the Sale deed along with affidavit and newspaper advertisement as indicated above, the respondent shall consider the registration of the document, if it is otherwise in order.

10. Accordingly, the Writ Petition stands allowed. No costs.

23.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Sub Registrar,
Mulanoor Sub Registrar Office,
Tiruppur District.



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S. SOUNTHAR, J.

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